

Message Text

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ORIGIN L-03

INFO OCT-01 ARA-06 ISO-00 OES-06 SS-15 NSC-05 SSO-00

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DRAFTED BY L/OES:RBURTON:TR

APPROVED BY ARA/BR:RWZIMMERMANN

OES/OFA:BHALLMAN

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O 122025Z MAY 76

FM SECSTATE WASHDC

TO AMEMBASSY BRASILIA IMMEDIATE

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E.O. 11652: N/A

TAGS: EFIS, BR

SUBJECT:SEIZURE INCIDENT

1. DEPT. HAS REVIEWED RECENT SEIZURES US SHRIMP VESSELS FISHING IN AREA OF US-BRAZIL SHRIMP AGREEMENT PRIOR TO COMPLETION OF 15 DAY NOTICE PROVISIONS OF AGREEMENT. DEPT CONCLUDES THAT ANY US VESSEL FISHING IN AREA OF AGREEMENT AS DEFINED IN ARTICLE 1 IS COVERED BY TERMS OF AGREEMENT AND ANY FISHING IN THE AREA INCOMPATIBLE WITH AGREEMENT IS TO BE DEALT WITH IN ACCORDANCE WITH AGREEMENT. WE REMAIN UNCLEAR AS TO GOB'S BASIS FOR ANY OTHER INTERPRETATION SINCE AGREEMENT APPLIES TO FISHERY RPT FISHERY IN AGREEMENT AREA, NOT RPT NOT GOB AUTHORIZED FISHING, ONLY, AND WE SEE NO GROUNDS FOR DIFFERENTIATING ONE KIND OF VIOLATION FROM ANOTHER IN TERMS OF WHETHER DOMESTIC PENALTIES OR AGREEMENT ENFORCEMENT FEES ARE IN ORDER. THIS VIEW IS BOLSTERED BY GOB DOMESTIC LAW GIVING PRECEDENCE TO INTERNATIONAL AGREEMENTS.

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2. ACCORDINGLY, DEPT BELIEVES FISHING ACTIVITIES OF THE SEAFAR AND VIKING LEADING TO SEIZURE OF THESE VESSELS AUTHORIZED BY ARTICLE 5 OF THE AGREEMENT ARE TO BE DEALT WITH BY BOTH GOVERNMENTS UNDER TERMS OF THE AGREEMENT. THUS, UNDER ARTICLE 5, GOB IS OBLIGATED TO DELIVER ANY SEIZED VESSEL OF THE US TO US AUTHORITIES IMMEDIATELY AFTER SATISFACTION OF THE ENFORCEMENT FEES PROVIDED FOR IN ARTICLE 6 AND THE RELATED MINUTE AND EXCHANGE OF NOTES. LEVY OF FINE UNDER GOB DOMESTIC LAW IS NOT RPT NOT PROVIDED FOR BY AGREEMENT, WHICH HAS BEEN UNDERSTOOD TO CONTEMPLATE US PROSECUTION OF VESSELS VIOLATING AGREEMENT AND NOTIFICATION TO GOB OF INSTITUTION AND DISPOSITION OF CASE BY USG.

3. AT THE SAME TIME DEPARTMENT IS DESIROUS OF REACHING PRACTICAL SOLUTION TO PROBLEMS POSED BY THESE RECENT SEIZURES AND BELIEVES THAT FURTHER EFFORT TO EXPLAIN US LEGAL POSITION TO APPROPRIATE AUTHORITIES AND TO CLARIFY ON BOTH SIDES THE NATURE OF OUR ESSENTIAL DIFFERENCES, IF ANY PERSIST, SHOULD BE MADE. AS GOB AWARE, APPLICATION OF BRAZILIAN DOMESTIC LAW WOULD CREATE PROBLEMS BY BRINGING INTO PLAY US LEGISLATION. WHILE IN IMPLEMENTING OUR LEGAL REQUIREMENTS, WE WOULD MAKE EVERY EFFORT TO TAKE INTO ACCOUNT FULL CONTEXT OF RECENT GOB DECISION AND ACTIONS IN FISHERIES QUESTIONS (INCLUDING POSSIBLE LENIENCY ON TECHNICAL VIOLATIONS WHERE GOOD FAITH OF OWNERS/MASTERS NOT IN DOUBT), IT APPEARS GOB MIGHT HAVE MORE FLEXIBILITY THAN WE IN THAT WITH RESPECT TO RECENT INCIDENTS TREATY PROVIDES CLEAR ALTERNATIVE TO DOMESTIC LEGISLATION WITH ADEQUATE MEANS TO DISCOURAGE FURTHER VIOLATIONS.

4. IN SPECIFIC TERMS, SECTION 3(B) OF THE FOREIGN MILITARY SALES ACT MAY COME INTO PLAY AS A RESULT OF GOB ACTION BECAUSE, ALTHOUGH CASE IS GOVERNED BY AN INTERNATIONAL AGREEMENT TO WHICH THE US IS A PARTY, GOB MAY NOT BE COMPLYING WITH THAT AGREEMENT, AND IS THEREFORE -AKING ACTION AGAINST US VESSEL NOT RPT NOT AUTHORIZED BY USG. SEIZURE UNDER AGREEMENT AND FINE UNDER DOMESTIC LAW RAISES UNIQUE FACTS AND NOVEL LEGAL ISSUE THAT MUST BE ADDRESSED ON BASIS OF ELABORATION GOB LEGAL POSITION.

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5. UNDER SECTION 205(A)(3) OF THE NEW FISHERIES MANAGEMENT AND CONSERVATION ACT OF 1976 (PL94-265), QUESTION ARISES OF IMPOSITION OF PROHIBITION OF IMPORTS OF FISH PRODUCTS TO THE US FROM THE FISHERY INVOLVED AS A RESULT OF GOB ACTION. THIS SECTION HAS ENTERED INTO FORCE ALTHOUGH OTHER PORTIONS OF LAW, INCLUDING EXTENSION OF US FISHING JURISDICTION TO 200 MILES DO NOT BECOME EFFECTIVE UNTIL

MARCH 1, 1977. IT PROVIDES IN RELEVANT PART AS
FOLLOWS:

(A) IF THE SECRETARY OF STATE DETERMINES THAT --

(3) ANY FOREIGN NATION IS NOT COMPLYING WITH ITS
OBLIGATIONS UNDER ANY EXISTING INTERNATIONAL FISHERY
AGREEMENT CONCERNING FISHING BY FISHING VESSELS OF THE

-- "-

UNITED STATES IN ANY FISHERY OVER WHICH THAT NATION
ASSERTS EXCLUSIVE FISHERY MANAGEMENT AUTHORITY;

...

HE SHALL CERTIFY SUCH DETERMINATION TO THE SECRETARY
OF THE TREASURY.

THE SECRETARY OF TREASURY IS THEN REQUIRED IMMEDIATELY TO
TAKE SUCH ACTION AS MAY BE NECESSARY AND APPROPRIATE TO
PROHIBIT THE IMPORTATION INTO THE UNITED STATES OF ALL
FISH AND FISH PRODUCTS FROM THE FISHERY INVOLVED, IF ANY.

6. DEPT HAS NOT RPT NOT YET DETERMINED WHETHER IMPORT
PROHIBITION THUS CONTEMPLATED (OR FMS SUSPENSION) MUST BE
IMPOSED IN THIS CASE, AND IS ACTIVELY REVIEWING SITUATION
FURTHER. WILL ADVISE EMBASSY OF RESULTS ASAP. EMBASSY
SHOULD ALSO BE AWARE IMPORT PROHIBITION CAN BE REMOVED
BY SECRETARY OF STATE UPON A FINDING THAT THE REASONS FOR
ITS IMPOSITION NO LONGER PREVAIL.

7. IN LIGHT OF FOREGOING REQUEST EMBASSY TO CONTACT
BRAZILIANS TO CONVEY AGAIN, DRAWING ON ABOVE, OUR LEGAL
INTERPRETATION OF THE AGREEMENT, AND EXPLAIN US DOMESTIC
LAW. EMBASSY SHOULD PROPOSE CONSULTATIONS (BEGINNING
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AT EMBASSY-ITATMARATY LEVEL) AS PROVIDED BY ARTICLE X OF
THE AGREEMENT: TO ELICIT AND CLARIFY GOB ARGUMENTS, IF
ANY, FOR A CONTRARY POSITION, TO REVIEW PRESENT
NOTIFICATION PROCEDURES, AND TO EXPLORE METHODS FOR AVOID-
ING INCIDENTS AS A RESULT OF TECHNICAL DIFFICULTIES. YOU
MAY POINT OUT THAT IT IS OFTEN DIFFICUL; TO CONTROL FISH-
ERMEN, AND UNDERScore AGAIN THAT WE ARE JUST AS INTERESTED
AS GOB IN EFFECTIVE ENFORCEMENT OF THE AGREEMENT. HOWEVER,
IT REMAINS OUR VIEW THAT ANY US VESSEL FISHING IN AREA OF
AGREEMENT IN A MANNER NOT COMPATIBLE WITH AGREEMENT SHOULD
BE DEALT WITH IN ACCORDANCE WITH AGREEMENT ENFORCEMENT
PROCEDURES, WHICH ARE FULLY ADEQUATE TO ENSURE COMPLIANCE
AND PUNISH VIOLATORS. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: SHELLFISH, SHIP DETENTION, FISHING BOATS, FOREIGN POLICY POSITION
Control Number: n/a
Copy: SINGLE
Draft Date: 12 MAY 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: buchant0
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04 MAY 2006

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